



## Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact [support@jstor.org](mailto:support@jstor.org).

debted to defendant in excess of the amount of the check, that the partner held himself out to be a sole trader and did not disclose to defendant that he was trading for the firm, that defendant had neither notice nor knowledge of the firm at or before the issuance of the check, but believed that the partner was trading as sole trader, and that the sum due from the partner to defendant remained unpaid, and that defendant offered, according to the statute, the sum as a set-off, is good in the absence of any demurrer or exception thereto on account of its form.

[Ed. Note.—For other cases, see Pleading, Cent. Dig. §§ 1384, 1385; Dec. Dig. § 411.\* 10 Va.-W. Va. Enc. Dig. 896.]

**3. Partnership (§ 162\*)—Set-Off and Counterclaim (§ 44\*)—Mutuality of Obligations—Partners.**—A partner who holds himself out and who trades as a sole trader is an agent of his undisclosed principal, and one having no knowledge of the existence of the partnership may set off claims against the partner acquired before knowledge of the partnership.

[Ed. Note.—For other cases, see Partnership, Cent. Dig. §§ 296-299; Dec. Dig. § 162; Set-Off and Counterclaim, Cent. Dig. §§ 82-96, 98, 99; Dec. Dig. § 44.\* 10 Va.-W. Va. Enc. Dig. 854.]

Error to Circuit Court, Wise County.

Action by I. P. Kane and others, a partnership doing business under the firm name of D. S. Bond, against the Dixon Livery Company. There was a judgment for plaintiffs, and defendant brings error. Reversed and cause remanded.

*Bond & Bruce*, of Wise, for plaintiff in error.

*Vicars & Peery*, of Wise, for defendants in error.

---

E. SUTHERLAND & CO. *v.* GIBSON.

Sept. 9, 1915.

[86 S. E. 108.]

**1. Time (§ 11\*)—Time of Delivery—Fraction of Day.**—Where a particular day or time is appointed for delivery of goods or the payment of the price, the party to the contract has the whole of the day for performance on his part; and such right is not affected by a custom, where the contract was not entered into in pursuance thereof.

[Ed. Note.—For other cases, see Time, Cent. Dig. § 53; Dec. Dig. § 11.\* 3 Va.-W. Va. Enc. Dig. 421.]

**2. Customs and Usages (§ 15\*)—Evidence—Admissibility.**—Parol evidence is admissible to show the custom of the locality where a contract was made, or the usage of trade with reference to which,

---

\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

in the absence of special agreement, the parties are deemed to have contracted.

[Ed. Note.—For other cases, see Customs and Usages, Cent. Dig. §§ 30-33; Dec. Dig. § 15.\* 13 Va.-W. Va. Enc. Dig. 416.]

**3. Customs and Usages (§ 17\*)—Varying Contract—Evidence.—**

Where the minds of parties to a written contract have met in an explicit understanding of the terms thereof, extraneous evidence of a custom which alters or varies the terms of such contract is inadmissible.

[Ed. Note.—For other cases, see Customs and Usages, Cent. Dig. § 34; Dec. Dig. § 17.\* 3 Va.-W. Va. Enc. Dig. 408.]

Error to Circuit Court, Russell County.

Action by E. Sutherland & Co. against H. C. Gibson. Judgment for defendant, and plaintiffs bring error. Reversed and remanded.

*Finney & Wilson*, of Lebanon, for plaintiffs in error.

*S. B. Quillen*, of Lebanon, for defendant in error.

FIELDS-WATKINS CO. et al. v. HENSLEY et al.

Sept. 9, 1915.

[86 S. E. 113.]

**1. Fraudulent Conveyances (§ 132\*)—Retention of Possession—Statutory Provisions.—**A seller, executing a bill of sale, remained in possession, and when the property was released from a prior deed of trust it was not turned over to the buyer, but was turned over to the seller, who receipted to the trustee in the deed of trust for the same. The possession was never changed from that of the seller to the buyer. The bill of sale was not recorded. Held, that the sale was void as against creditors of the seller, under Code 1904, § 2465, making every bill of sale, when possession remains with the seller, void as to creditors, except from the time it was recorded in the county or corporation wherein the property may be.

[Ed. Note.—For other cases, see Fraudulent Conveyances, Cent. Dig. §§ 407-424; Dec. Dig. § 132.\* 6 Va.-W. Va. Enc. Dig. 592.]

**2. Execution (§ 185\*)—Rights of Third Persons—Statutes—Construction.—**Under Code 1904, § 3001, a claimant to property sought to be taken under execution against another must give a suspending bond, and within 30 days thereafter proceed to have title to the property settled; and the giving of the suspending bond and the bringing of the proceedings within the statutory time are indispensable to jurisdiction of the court to determine title.

[Ed. Note.—For other cases, see Execution, Cent. Dig. §§ 552-556, 558; Dec. Dig. § 185.\* 5 Va.-W. Va. Enc. Dig. 407.]

---

\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.